

Readopt with amendment Rea 701.01, effective 6-28-01 (Document #7522), to read as follows:

Rea 701.01 Agency and Non-Agency Disclosure.

(a) ~~A licensee acting in the capacity of a seller's/landlord's agent shall disclose to a buyer/tenant or buyer's/tenant's agent such fact prior to showing property.~~ **A licensee must provide a written agency relationship disclosure to the consumer at the time of first meeting to discuss a specific property.**

(b) ~~A licensee acting in the capacity of a buyer's/tenant's agent shall disclose to a seller/landlord or seller's/landlord's agent such fact upon initial contact.~~ **A licensee showing a property listed with another agency shall disclose their agency or non-agency relationship verbally or in writing to the other parties' agent prior to showing the property and in writing no later than the preparation of the offer.**

(c) ~~A licensee acting in the capacity of a dual agent shall disclose to a seller/landlord or seller's/landlord's agent and to a buyer/tenant or buyer's/tenant's agent such fact prior to showing property.~~

(d) ~~A licensee acting in the capacity of a sub-agent shall disclose to the seller/landlord or seller's/landlord's agent and to a buyer/tenant or buyer's/tenant's agent such fact prior to showing property.~~

(e) ~~A licensee acting in the capacity of a non-agent shall disclose to a seller/landlord or seller's/landlord's agent and to a buyer/tenant or buyer's/tenant's agent such fact prior to showing property. This disclosure shall include notice that the licensee can only perform ministerial acts and is not obligated as an agent to either the buyer/tenant or seller/landlord, and the fact that this non-agency relationship at some future time, but prior to or at the time of submitting an offer to purchase property, could change to an agency relationship.~~

~~(f) (c) To comply with (a) through (e) above and (j) below, licensees shall, using the agency/non-agency disclosure form adopted~~ provided by the *New Hampshire real estate* commission, supply the following:

——— (1) A description of all of the relationships offered by the licensee's brokerage firm;

——— (2) A statement informing client(s) that the client(s) might be held liable for the acts of the principal broker and any sub-agents who are working on behalf of the client(s), when the sub-agents are acting within the scope of the agency relationship pursuant to RSA 331-A;

——— (3) A statement clearly describing the relationship between the licensee and the buyer/tenant and the seller/landlord;

——— (4) Dated signature of the buyer/tenant and seller/landlord or the buyer's/tenant's agent and the seller's/landlord's agent;

——— (5) Dated signature of the licensee; and

——— (6) Name of the real estate agency with which the licensee is associated.

(g)(d) The above referenced disclosure form shall not be required to be given to buyer/tenant and seller/landlord or other licensees who attend an open house if the broker or salesperson, by sign, poster, pamphlet or other conspicuous means, discloses that *the* licensee's agency or non-agency relationship with the seller.

(h)(e) If a buyer or seller chooses not to enter into a relationship with the licensee, ~~nor and the consumer~~ will **not** that buyer/tenant or seller/landlord sign **an agency and non-agency** disclosure form, the licensee shall note that fact on a copy of the disclosure form and shall retain such copy for 3 years.

(i) Independent forms shall comply with (f) above, and shall contain no other material.

(j) A licensee involved in a transaction for other than a one to 4 family dwelling shall disclose the agency relationship, or non-agency relationship, to the seller/landlord and buyer/tenant, or to the seller/landlord's and buyer/tenant's agents at the earliest practical opportunity, but no later than the preparation of an offer to purchase or lease real estate. Such disclosure shall conform with paragraph (f) above.

(f) **A licensee acting in the capacity of a dual agent shall:**

- (1) *At the time of first meeting with a consumer to discuss a specific property, provide a written Agency Relationship Disclosure pursuant to 701.01(a);*
- (2) *On the listing agreement and buyer agency agreement, give the client the option to accept or deny a disclosed dual agency statement of consent. This consent must be signed and dated by client and licensee in addition to the agency agreement signatures;*
- (3) *At the time of showing notify all parties that a dual agency has occurred by leaving written notice at the property identifying all parties to the transaction.;*
- (4) *Be required to ensure that notice of the dual agency is signed and reviewed by the buyer no later than the preparation of an offer and by the seller at the time of presentation of offer but prior to review of offer;*
- (5) *Indicate on the offer that the broker is acting in the capacity of a dual agent.*

Readopt with amendment Rea 702.01, effective 6-28-01 (Document #7522) to read as follows:

Rea 702.01 Trust Accounts.

- (a) Every resident and non-resident **principal** broker licensee who in the course of her or his real estate business in the State of New Hampshire receives, accepts and holds any monies on behalf of any principal, client or other person shall at all times maintain a separate escrow or real estate trust account, distinct from her or his own account, in a financial institution of her or his choice located in this state, for the deposit of all such monies so received by the licensee, pursuant to RSA 331-A:13.
- (b) Upon acceptance and execution of a contract, all earnest money deposited and down payments received by a **principal** broker as **escrow** agent ~~for her or his principal~~ in a real estate transaction shall be promptly deposited in her or his separate escrow or real estate trust account ~~until either the consummation or termination of the transaction, pursuant to RSA 331-A:13, when at that time the principal broker shall be responsible to make full accounting thereof to the signatories to the contract., pursuant to RSA 331-A:13.~~

Readopt with amendment Rea 703.01, effective 6-28-01 (Document #7522) to read as follows:

Rea 703.01 Cooperating Agreements.

- (a) A licensed New Hampshire broker may cooperate with a non-New Hampshire broker on ~~the purchase, sale, rental, leasing, or management of properties located in this state,~~ **except as stated in 701.03(b)**, provided that both brokers agree in writing to all of the terms expressed in a cooperating agreement prior to the commencement of any such brokerage activity.
- (b) *A New Hampshire broker shall not enter into a cooperating agreement with a non-New Hampshire broker to list, offer, attempt, or agree to list real estate in this state, pursuant to RSA 331-A:22-a.*
- (c)(b) To comply with (a) above, New Hampshire brokers shall obtain from the commission, a Cooperating Agreement With a Non-New Hampshire Broker Form.

(d)(e) The New Hampshire broker shall complete the Cooperating Agreement Form, by supplying the following:

- (1) Date the agreement was entered into by the parties;
- (2) Date the agreement will expire;
- (3) Name, telephone numbers and address of the owner(s) of the properties or, when the agreement involves buyer or tenant representation, the name, telephone number and address of the buyer(s) or tenant client(s);
- (4) Location and/or legal description of the properties, when applicable;
- (5) A statement which requires the parties to agree to the type of business the agreement covers;
- (6) A statement that both the New Hampshire broker and the non-New Hampshire broker agree that all negotiations, including the showing, advertising, and listing of the property shall be handled under the direct supervision of the New Hampshire broker, with the New Hampshire broker recognizing her or his responsibility under RSA 331-A;
- (7) A statement that by signing the cooperating agreement, the non-New Hampshire broker is:
  - a. Agreeing to abide by New Hampshire law, and the rules of the commission; and
  - b. Is formally granting an irrevocable consent and power providing that legal actions can be commenced against said broker in the proper court of any county of this state in which a cause of action does arise or in which the plaintiff resides by service of process or pleading authorized by the laws of this state on a member of the commission or its executive director, the consent or power stipulating that such service of process or pleading shall be taken in all courts to be valid and binding as if personal service had been made upon the nonresident in this state;
- (8) A statement requiring the New Hampshire broker to accept the responsibility for determining that the non-New Hampshire broker is licensed as a broker in another state and agreeing to notify the New Hampshire real estate commission immediately if the non-New Hampshire broker violates any part of the cooperating agreement;
- ~~(9) A statement that the non-New Hampshire broker agrees not to place any sign on real property located in the State of New Hampshire;~~
- ~~(10) A statement that the non-New Hampshire broker agrees not to advertise the listing in any manner unless the New Hampshire broker is included in the advertising and that such advertising shall be with full knowledge of and under the direct supervision of the New Hampshire broker, giving the name and telephone number of the New Hampshire broker equal prominence with the non-New Hampshire broker;~~
- (11) The commissions or other compensation, stated as a dollar amount, percentage, or other specific consideration;
- (12) A statement that if any earnest monies or deposits are received, accepted, or held in accordance with Rea 702.01, the same shall be placed in the escrow account of the New Hampshire broker;
- (13) The name, address, and witnessed signature of the New Hampshire broker; *and*
- (14) The name, address, and witnessed signature of the non-New Hampshire broker.

(e)(d) The commissions or other compensations resulting from the purchase, ~~sale~~, rent, lease, ~~property management~~ of the property and which are earned during the period the agreement is in force shall be divided between the New Hampshire broker and the non-New Hampshire broker on a negotiable basis;

(e) If the agreement specified in (e) above, covers any kind of listing or property management:

- ~~(1) The listing or property management agreement shall be in the name of the New Hampshire broker or the New Hampshire broker shall require a cross listing or joint listing of such property with the non-New Hampshire broker; and~~

~~\_\_\_\_\_ (2) The non-New Hampshire broker shall affirm, if the agreement covers any type  
\_\_\_\_\_ of listing, that the listing was not solicited by her/him in the State of New Hampshire  
\_\_\_\_\_ without being in the presence of the New Hampshire broker at the time of the  
\_\_\_\_\_ solicitation.~~

(f) The parties shall execute 2 completed original cooperating agreements. The New Hampshire broker and the non-New Hampshire broker shall each receive one of these originals.